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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICIA MARION CONKLIN,

Defendant and Appellant.

H041599

(Monterey County

Super. Ct. No. SS130600)

I. INTRODUCTION

After a jury trial in 2013, defendant Patricia Marion Conklin was convicted of three felony counts of elder abuse likely to produce great bodily harm or death (Pen. Code, § 368, subd. (b)(1))¹ involving her mother, Margarita Zelada, a person 70 years of age or older.² The trial court sentenced defendant to a total term of eight years in the state prison, suspended execution of the sentence, and placed defendant on formal probation for four years.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Pursuant to defendant's request for judicial notice, which this court granted in the order of May 6, 2015, we take judicial notice of our prior opinion in *People v. Conklin* (Jan. 27, 2015, H040234) [nonpub. opn.] (*Conklin I*). (Evid. Code, § 452, subd. (d)(1).) Our summary of the factual and procedural background includes some information that we have taken from our prior opinion in *Conklin I, supra*, H040234.

In 2014, the probation department filed a notice of violation of probation stating that defendant had violated the terms and conditions of her probation by failing to report to the probation department as directed, possessing the identifying information of another, and failing to obey all laws. Based upon the evidence presented at the formal probation violation hearing, the trial court found that defendant had violated probation as stated in the notice. The trial court revoked and terminated probation and executed the eight-year sentence that the court had previously imposed.

On appeal, defendant challenges the sufficiency of the evidence for the trial court's finding that she violated probation. For the reasons stated below, we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Underling Offenses: Conklin I

In early March 2013, Zelada's estate was under a temporary conservatorship. A Monterey County Health Department deputy public guardian, Jennifer Empasis, was the conservator. At that time, Zelada's estate included \$3,000 in monthly rental income from her San Francisco property, \$4,000 to \$5,000 in monthly benefits, and an IRA account with a balance of \$400,000 to \$500,000. Defendant had control of the rental income, which she collected in cash and was able to spend.

On March 1, 2013, police officer Ryan Anderson responded to a call for medical assistance for the victim of a fall at the Pacific Grove home shared by Zelada and defendant. When Officer Anderson entered the home, he saw Zelada, age 77, lying on the kitchen floor in distress. Officer Anderson approached Zelada, who said, "She pushed me, she pushed me." Police Sergeant Roxanne Viray also responded to the call for medical assistance at the the home of Zelada and defendant. When Sergeant Viray asked Zelada if she was okay, Zelada said, "My daughter pushed me."

Zelada was transported to Community Hospital of the Monterey Peninsula, where she told an emergency room nurse that she had fallen to the floor when her daughter pushed her. The next day, Zelada had surgery to repair a hip fracture. She was later transferred from the hospital to Windsor Monterey Care Center (Windsor Care), a skilled nursing facility. By that time, Empasis had obtained a temporary conservatorship of Zelada's person and authorized Zelada's medical care.

On March 9, 2013, three days after Zelada was admitted to Windsor Care, defendant arrived and demanded to take her mother home. Windsor Care staff contacted the on-call deputy public guardian, who told defendant that it was unsafe to remove her mother because she had a broken hip. Due to the dispute with defendant regarding the removal of her mother, Windsor Care staff called the police. Since the letters of authorization granting Empasis temporary conservatorship powers had not been received by Windsor Care, the police officer who responded allowed defendant to remove Zelada.

A welfare check on Zelada was performed by police officers at Empasis's request during the evening of March 9, 2013, after defendant had taken Zelada to their home. The police officers found that Zelada was in bed with no clear path to the bathroom because the floor was cluttered with shoes, electrical cords, and other items. Zelada told an officer it was painful for her to stand and walk. Photographs taken by the deputy public guardians on March 26, 2013, showed a number of safety hazards in the home. When Empasis went to the home on April 2, 2013, she observed that the mattress in Zelada's bedroom was soiled with blood and urine.

In April 2013, defendant was charged by information with three felony counts of elder abuse likely to produce great bodily harm or death (§ 368, subd. (b)(1)): count 1 [pushing Zelada down on March 1, 2013]; count 2 [removing Zelada from the skilled nursing facility on March 9, 2013]; count 3 [placing Zelada in their home on March 9, 2013]. The information further alleged that during the commission of count 1 defendant

personally inflicted great bodily injury on Zelada, a person 70 years of age or older. (§ 12022.7, subd. (c).)

The case proceeded to a jury trial in July and August of 2013. On August 12, 2013, the jury rendered its verdict finding defendant guilty on all three counts of elder abuse likely to produce great bodily harm or death (§ 368, subd. (b)(1)). The jury also found true the allegation that during the commission of count 1, the defendant personally inflicted great bodily injury on Zelada, a person 70 years of age or older. (§ 12022.7, subd. (c).)

At the sentencing hearing held on September 27, 2013, the trial court imposed a total term of eight years in the state prison, comprised of two years on count 1, plus an enhancement of five years pursuant to section 12202.7, subdivision (c); one year on count 2 to be served consecutively to the sentence on count 1; and three years on count 3, to be served concurrently with the sentence on count 1. The court suspended execution of the sentence and placed defendant on formal probation for four years.

The trial court imposed several terms and conditions of probation, including, among others, “Obey all laws”; “Report to Probation Officer . . . as required”; “Do not knowingly use or possess alcohol, intoxicants, narcotics, or other controlled substances without the prescription of a physician”; and “Defendant shall not possess any identifying information of another, including but not limited to, a driver’s license, a Social Security card, a credit card, ATM card, personal checks, or a passport.”

Defendant appealed and in *Conklin I, supra*, H040234, we modified the judgment by staying the three-year sentence imposed on count 3. As so modified, we affirmed the judgment. The clerk of the superior court was directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

B. Probation Violation Proceedings

1. Notice of Violation of Probation

On April 1, 2014, defendant's probation officer filed a notice of violation of probation. The notice stated that defendant had violated the following terms and conditions of probation: "1. Failure to report to probation as directed. On February 14, 2014, the defendant was directed to report to probation on March 19, 2014. On March 18, 2014, the defendant requested the office visit be rescheduled to March 26, 2014. She was directed to attend on March 26, 2014 and failed to report as directed. [¶] 2. Possession of identifying information of another, including but not limited to a social security card and a passport. On March 27, 2014, during a random search of the defendant's property located inside her car, she was found to be in possession of the victim's social security card and passport. [¶] 3. Failure to obey all laws. On March 28, 2014, the defendant was charged with [felony violations of section 485 and Health and Safety Code section 11377 (a) and misdemeanor violation of Business and Professions Code section 4060]."

The trial court revoked probation to retain jurisdiction on April 1, 2014.

2. Probation Revocation Hearings

The probation revocation hearing was held on May 9, 2014, followed by a further probation revocation hearing on July 25, 2014. The probation revocation hearings were held concurrently with the preliminary hearing in a new case.³ Several witnesses testified.

³ We granted defendant's request to take judicial notice of the complaint filed in the new case, *People v. Conklin* (Super. Ct. Monterey County, No. SS140762A), on April 1, 2014. In that case, defendant was charged with felony possession of hydrocodone (Health & Saf. Code, § 11350, subd. (a); count 1), misdemeanor petty theft of of Zelada's Social Security card and passport (§ 485; count 2), and misdemeanor possession of 10-Methyphenidate (Bus. & Prof. Code, § 4060; count 3).

Defendant's probation officer was Elizabeth Crooks. Defendant was told to report to probation on March 19, 2014. That appointment was rescheduled to March 26, 2014, at 1:00 p.m. Defendant did not appear for her March 26, 2014 appointment.

At 3:11 p.m. on March 26, 2014, defendant emailed Officer Crooks and explained that she had missed the appointment because she was taking a friend who had muscular dystrophy to his doctor's appointment. According to defendant, she decided to help her friend, Robert Garcia, instead of attending her appointment at the probation department because Garcia could not drive and needed assistance. Garcia recalled that his doctor's appointment was a follow-up appointment scheduled two weeks after an accidental fall. Defendant had another friend, Jim Kramer, call the probation department before her March 26, 2014 appointment to tell them that she was going to miss the appointment, and he was told it was okay for her to come the next day.

Defendant drove her car to the probation department the next day, March 27, 2014. Officer Crooks personally observed defendant go into a restroom and provide a urine sample for drug testing that appeared to be "clear, almost like water." The laboratory reported that the March 27, 2014 urine sample was diluted. Defendant had previously provided a diluted urine sample on February 14, 2014.

While defendant was inside the probation department office on March 27, 2014, Officer Crooks and another probation officer, Rosana Maravilla, conducted a probation search of defendant's car. Officer Crooks found a make-up bag directly behind the driver's seat. When Officer Crooks opened the make-up bag, she found multiple pills, pill bottles, an expired passport belonging to Zelada, and a receipt for attending a domestic violence class dated March 10, 2014. Officer Crooks also found a computer bag under the make-up bag that contained Zelada's Social Security card.

Officer Crooks handed the make-up bag to Officer Maravilla, who examined the bag's contents. Officer Maravilla found four pill bottles that appeared to be prescriptions

in defendant's name, a single white pill she identified as "WATSON 349 acetaminophen and hydrocodone" or Vicodin, 61 loose green pills that she identified as Ritalin, and a pill container with the name on the label scratched off. Defense counsel stipulated that the drug methylphenidate is sold under the name of Ritalin. Officer Matthew Blackmon of the Seaside Police Department, a narcotics and gang investigator, also determined that the single white pill was a hydrocodone pill. According to Officer Blackmon, both Ritalin and hydrocodone are commonly used illegally and have a street value. Defendant explained that she had been prescribed Vicodin by dentists, although she did not have a current prescription.

During the summer of 2012, the daughter of defendant's friend, Allyxhandra Vellara, lived with defendant. Vellara provided defendant with her daughter's Ritalin medication, which later went missing. There was no reason for defendant to have the Ritalin in 2014, unless it had been lost in her car. Defendant was aware that she had the Ritalin and was planning to return it to Vellara.

On March 26, 2014, defendant was living in her car and storing many of her belongings there. She knew that Zelada's passport was in her car. She did not know that she had Zelada's Social Security card. Defendant believes that the passport and Social Security card were in boxes given to her by the public guardian. According to defendant, the public guardian had removed items from her home, boxed them up with no labels, and placed them in a storage room that defendant rented. Defendant's handyman would go through the boxes in the storage room, separate out the garbage, and put boxes of the remaining items in defendant's car. Defendant would then go through the boxes in her car, usually the next day, and decide what to do with the items. She also had papers in her computer bag that she had taken from the boxes to bring to her appellate attorney.

At the conclusion of the hearing, the trial court found that defendant was in violation of probation, stating: "I do find that the People have presented sufficient

evidence to prove [defendant] failed to report to probation, [defendant] possessed the identifying information of another person and that [defendant] failed to obey all laws.” The court also held defendant to answer all charges in the new case, *People v. Conklin*, *supra*, No. SS140762A.⁴

At the probation and sentencing hearing held on October 24, 2014, the trial court revoked and terminated probation and executed the previously suspended eight-year sentence. The trial court found that defendant could not be placed in a residential treatment program or a dual diagnosis treatment program (as requested in defendant’s statement in mitigation and addendum) because she had refused to admit that she had any issues. The court also stated: “The fundamental problem is, and I’m not sure that you can control it or not, is that you try to game the system and try to tell them what you need and don’t need, and that’s just simply not in your best interest. [¶] There’s no way I can find under the law that you are a continued candidate, good candidate for probation. Consequently, probation is revoked and terminated.”

III. DISCUSSION

Defendant filed a notice of appeal from the postjudgment order following the contested probation violation hearing. (§ 1237, subd. (b).) On appeal, defendant contends that the revocation of probation must be reversed because the evidence was insufficient to support the court’s findings that defendant violated probation as alleged in the notice of probation violation.

A. Probation Revocation and the Standard of Review

“In placing a criminal on probation, an act of clemency and grace [citation], the state takes a risk that the probationer may commit additional antisocial acts.” (*People v.*

⁴ This court granted defendant’s request to take judicial notice of an October 24, 2014 minute order indicating that case No. SS140762A was dismissed on motion of the district attorney.

Rodriguez (1990) 51 Cal.3d 437, 445 (*Rodriguez*).) Pursuant to section 1203.2, subdivision (a), the trial court is authorized to revoke probation “if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of his or her supervision, . . . or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses.”

The burden of proof at a probation revocation hearing is preponderance of the evidence. (*Rodriguez, supra*, 51 Cal.3d at p. 441.) “However, the evidence must support a conclusion the probationer’s conduct constituted a willful violation of the terms and conditions of probation. [Citation.]” (*People v. Galvan* (2007) 155 Cal.App.4th 978, 982.)

The California Supreme Court has instructed that the trial court is “granted great discretion in determining whether to revoke probation. [Citation.]” (*Rodriguez, supra*, 51 Cal.3d at p. 445.) Thus, “ ‘only in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation. . . .’ [Citation.]” (*Id.* at p. 443.)

“[W]here the trial court was required to resolve conflicting evidence, review on appeal is based on the substantial evidence test.” (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848 (*Kurey*).) The substantial evidence standard of review is deferential. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) Accordingly, “our review is limited to the determination of whether, upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court’s decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision.” (*Kurey, supra*, 88 Cal.App.4th at pp. 848-849, fns. omitted.)

B. Analysis

1. Failure to Appear for Probation Appointment

Defendant argues that there was insufficient evidence that defendant's failure to appear for her March 26, 2014 appointment with her probation officer was willful. Relying on the decision in *People v. Zaring* (1992) 8 Cal.App.4th 362 (*Zaring*), defendant asserts that the evidence shows that defendant forgot that she was scheduled to take her friend with a disability to his doctor's appointment on March 26, 2014; she informed the probation department before her appointment that she had to miss the appointment for that reason; and she saw the probation officer the next day.

The People respond that defendant, unlike the defendant in *Zaring*, did not miss her March 26, 2014 probation appointment because she had a last-minute emergency situation. According to the People, the evidence showed that defendant deliberately chose to take her friend to his medical appointment instead of attending her probation appointment, and therefore the evidence was sufficient to show that defendant's failure to report to probation was willful. We agree.

"A court may not revoke probation unless the evidence supports 'a conclusion [that] the probationer's conduct constituted a willful violation of the terms and conditions of probation.' [Citation.]" (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295.) "The word 'willfully' as generally used in the law is a synonym for 'intentionally,' i.e., the defendant intended to do the act proscribed by the penal statute." (*People v. Lewis* (2004) 120 Cal.App.4th 837, 852.) Thus, "[w]here a probationer is unable to comply with a probation condition because of circumstances beyond his or her control and defendant's conduct was not contumacious, revoking probation and imposing a prison term are reversible error. [Citation.]" (*Cervantes, supra*, 175 Cal.App.4th at p. 295.)

In the present case, the evidence showed that defendant's failure to appear at her March 26, 2014 probation appointment was not due to circumstances beyond her control.

To the contrary, defendant testified that she decided not to attend her probation appointment so that she could take her friend who needed assistance to his March 26, 2014 nonemergency medical appointment. There was no evidence that the probation department had agreed to reschedule defendant's March 26, 2014 appointment to another day. Since defendant admits that she chose to engage in another activity instead of appearing for her March 26, 2014 probation appointment, her failure to appear, even if for an altruistic reason, was willful. (See *Cervantes*, *supra*, 175 Cal.App.4th at p. 295.)

The decision in *Zaring*, on which defendant relies, does not compel a different conclusion since that decision is factually distinguishable. The defendant in *Zaring* was 22 minutes late for an 8:30 a.m. court appearance that the trial court considered a condition of probation. (*Zaring*, *supra*, 8 Cal.App.4th at p. 379.) Although the defendant explained that she had a last-minute child care problem that caused her to be late, the trial court found that her violation of probation was willful and revoked probation. (*Id.* at pp. 377-378.) The appellate court determined that the trial court had abused its discretion, stating: "Nothing in the record supports the conclusion that her conduct was the result of irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court. However, as a result of last minute circumstances, the appellant was approximately 22 minutes late to court, having driven some 35 miles from her home to the courtroom. Collectively, we cannot in good conscience find the evidence supports the conclusion that the conduct of appellant, even assuming the order was a probationary condition, constituted a willful violation of that condition." (*Id.* at p. 379, fns. omitted.)

In contrast to the facts in *Zaring*, defendant's failure to appear for her March 26, 2014 probation appointment was undisputedly not the result of last minute circumstances. Accordingly, we determine that substantial evidence supports a finding that defendant's failure to appear was willful and constitutes a violation of the probation condition that she

report to probation as directed. (See *Cervantes, supra*, 175 Cal.App.4th at p. 295; *Rodriguez, supra*, 51 Cal.3d at p. 445.)

2. Possessing Identifying Information of Another

Defendant was also subject to the probation condition that she “not possess any identifying information of another, including but not limited to, a driver’s license, a Social Security card, a credit card, ATM card, personal checks, or a passport.” On appeal, defendant argues that there was insufficient evidence to support the trial court’s finding that she knowingly possessed Zelada’s passport and Social Security card because it was uncontested that the documents were in her car because her handyman had placed them there and she had nowhere else to keep them.

The People emphasize that the substantial evidence standard of review requires that all inferences be resolved in favor of the judgment. They argue that under that standard, the trial court could infer that defendant knowingly possessed the passport in her make-up bag and the Social Security card in her computer bag, which were bags that defendant could frequently access since they were on top of other items stored in her car.

Our review of the evidence shows that defendant admitted that she knew that she had Zelada’s passport in her make-up bag, as indicated in the following colloquy:

“THE PROSECUTOR: The question is whether you knew you had those items in your car?

“THE DEFENDANT: Which items again?

“THE PROSECUTOR: The Vicodin, the Ritalin and your mother’s passport.

“THE DEFENDANT: . . . [¶] . . . I did see my mother’s expired passport. Yes, I did.

“THE PROSECUTOR: So you knew that was there?

“THE DEFENDANT: I knew that was there the day prior when it was put in my car. [¶] Yes, I did know it was in my car.”

Defendant denied knowing that Zelada's Social Security card was in her computer bag in her car, where it was found by the probation officers. However, we are mindful that under our standard of review we resolve all inferences and all conflicting evidence in favor of the judgment. (*Kurey, supra*, 88 Cal.App.4th at pp. 848-849.) The record shows that defendant testified that she was using her computer bag to take papers to her appellate attorney, and the computer bag was found in a readily accessible location behind the driver's seat of her car, under the make-up bag. Defendant also testified that she had gone through the boxes that her handyman placed in her car, which she believed had originally contained Zelada's Social Security card, and had decided what to do with the contents. On this evidence, the trial court could reasonably infer that defendant had knowingly possessed Zelada's Social Security card in her computer bag.

We therefore determine that substantial evidence supports the trial court's finding that defendant violated the condition of her probation prohibiting her from possessing the identifying information of another because defendant had knowingly possessed Zelada's passport and Social Security card.

3. Failure to Obey All Laws

Defendant contends that there was insufficient evidence to support a finding that defendant violated the condition of probation requiring her to obey all laws because she had possession of Ritalin and Vicodin. She asserts that the evidence showed that she had intended to return the Ritalin to the mother of the child for whom it was prescribed, there was no evidence that she had misused the Ritalin, and she had proved that she had a 2012 prescription for Vicodin.

The People maintain that the evidence showed that defendant had illegal possession of prescription medication because the Vicodin prescription was two years old, it had been two years since defendant cared for the child with the Ritalin prescription, and the name on the Ritalin container had been scratched out.

We find that defendant admitted during her testimony that she knew she had possession of a prescription medication, Ritalin, for which she had no prescription. Defendant testified as follows:

“THE PROSECUTOR: You knew the Ritalin and the Vicodin . . . were in that [make-up] bag, didn’t you?

“THE DEFENDANT: [I] had become aware of it when it was found in my storage and put in my car, yes, I did.” Defendant also testified that “I did see the Ritalin, and I was planning on returning it to [the child’s] mother [¶] I never saw the Vicodin because I didn’t really look through the bag carefully.”

Thus, defendant’s own testimony was sufficient to show that she had violated the condition of probation that she obey all laws, by knowingly possessing a controlled substance, Ritalin, without a prescription in violation of Business and Professions Code section 4060.

4. The Trial Court Did Not Abuse Its Discretion

Finally, defendant argues that the judgment must be reversed because the trial court revoked probation on the “mistaken understanding that [defendant] violated all three conditions of probation.” This argument is unconvincing. As we have discussed, substantial evidence supports the trial court’s findings that defendant violated the terms and conditions of her probation requiring her to report to the probation department as directed, not possess the identifying information of another, and obey all laws. We therefore conclude that the trial court did not abuse its discretion in revoking and terminating probation and imposing the previously suspended total term of eight years, and we will affirm the judgment. (See *Rodriguez, supra*, 51 Cal.3d at p. 445.)

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.